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Managed by Fermi Research Alliance, LLC for the U.S. Department of Energy Office of Science

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# **Detailed - Allowable and Unallowable Overview and Cost Training**

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# Overview and Training

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- Allowable and Unallowable Costs
  - Prime Contract applicability
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- Allowable and Unallowable Costs - DEAR
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## Allowable and Unallowable Costs - Definition

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- Fermilab is a DOE-funded, managed by Fermi Research Alliance, LLC (FRA)
- The contract between DOE and FRA is the Prime Contract



- **Allowable Costs:** Expenses included in a contracted service or product that can be charged to the Prime Contract, also called “contract chargeable”
- **Unallowable Costs:** Costs not allowed to be charged to the Prime Contract, also called “non contract chargeable”

## Allowable and Unallowable Costs - Definition

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- Only allowable costs can be charged to the Prime Contract
- Any unallowable costs charged to the Prime Contract must be repaid
- Unallowable costs charged to the Prime Contract that are found via audits become “audit findings”



## Allowable and Unallowable Costs – Prime Contract

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- Fermilab is governed by the terms of the Prime Contract  
Clause I.17, page 339:
  - (j) *Determining allowable costs.* The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- The Department of Energy Acquisition Regulation is “DEAR”
- The Federal Acquisition Regulation is “FAR”
- Notice the last sentence of Clause 1.17 “and other provisions of this contract.”
- We use DEAR, FAR, and other provisions of the contract to determine allowable costs

# Allowable and Unallowable Costs – Contract Provisions

## Clause H.4 lists Advance Understanding items of allowable and unallowable costs per the Prime Contract:

### CLAUSE H.4- ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective Contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this Contract to the extent indicated:

#### I. ITEMS OF ALLOWABLE COSTS:

- (a) Personnel costs in accordance with Appendix A attached to this contract.
- (b) Costs for the defense and indemnification of employees in accordance with the provisions of Clause H.37.
- (c) Rentals and leases of land, buildings, and equipment owned by third parties.



allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.

- (d) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
- (e) Notwithstanding the provisions of FAR cost principle 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.
- (f) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.
- (g) Net costs for the Fermilab swimming pool.

#### II. ITEMS OF UNALLOWABLE COSTS:

- (a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (b) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.

# Allowable and Unallowable Costs – Contract Provisions

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## Advance Understanding for Allowable Costs:

### Allowable:

- a) Personnel costs...
- b) Cost for the defense and indemnification of employees...
- c) Rental and leases....subject to approval of **Contracting Officer**...
- d) ...stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract...educational or training activities...educational or training programs approved by **Contracting Officer**.
- e) ...payments to educational institutions for tuition and fees...
- f) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the **Contracting Officer** and not unallowable under any other provisions of this contract.
- g) Net costs for the Fermilab swimming pool.

# Allowable and Unallowable Costs – Contract Provisions

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## Advance Understanding for Unallowable Costs

### Unallowable:

- a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- b) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the **Contracting Officer**.
  - In this instance “Home office” refers to FRA, not individual employees.
  - The contract has been appended to cover certain Home office expenses.

The Contracting Officer can determine the allowability of an expenditure (decision based on appropriate due diligence).



## Allowable and Unallowable Costs – FAR and DEAR

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- After the Prime Contract Advance Understanding items, the next level of guidance comes from FAR and DEAR:
  - (j) *Determining allowable costs.* The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- Since FAR is written for all Federal Agencies and DEAR pertains only to DOE, DEAR is more restrictive than FAR.



A picture of some FAR  
away Deer/DEAR

## Allowable and Unallowable Costs – FAR and DEAR

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When trying to determine the allowability of an expenditure the proper order of research is:

- First go to FAR 31.205 to see if a situation is covered. If FAR contains coverage of the topic, then go to DEAR to see if there is a corresponding cost item.
- **If there is no corresponding coverage in DEAR subpart CFR 970.31, then the FAR governs. If there is coverage in the DEAR, then the DEAR governs.**
- This is a complex process and can require expertise.
- FAR contains much more detail than DEAR as DEAR is supplemental to the FAR.

# Allowable and Unallowable Costs – DEAR

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A slide on DEAR



- DEAR provides additional requirements that must be followed by DOE and its contractors over and above the requirements of FAR.
- It has a lot of requirements regarding contract management.
- It is not worthwhile to delve into the DEAR. For most allowability determinations, the Prime Contract and FAR provide the appropriate guidance.

## Allowable and Unallowable Costs – FAR

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Now let's look at FAR not DEAR



# Allowable and Unallowable Costs – FAR

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FAR can be found on the internet using a simple search

- (j) *Determining allowable costs.* The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

## Subpart 31.2 - Contracts with Commercial Organizations

[31.201 General.](#)



Click 31.201 to see the next page.

[31.202 Direct costs.](#)

[31.203 Indirect costs.](#)

[31.204 Application of principles and procedures.](#)

[31.205 Selected costs.](#)

Parent topic: [Part 31 - Contract Cost Principles and Procedures](#)

# Allowable and Unallowable Costs – FAR

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## 31.201 General.

31.201-1 Composition of total cost.

31.201-2 Determining allowability.

31.201-3 Determining reasonableness.

31.201-4 Determining allocability.

31.201-5 Credits.

31.201-6 Accounting for unallowable costs.

31.201-7 Construction and architect-engineer contracts.



Wow! There's a whole section on Determining Allowability!





# Allowable and Unallowable Costs – FAR

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## 31.201-2 Determining allowability.

- (a) A cost is allowable only when the cost complies with all of the following requirements:
  - (1) Reasonableness.
  - (2) Allocability.
  - (3) Standards promulgated by the CAS Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the circumstances.
  - (4) Terms of the contract.
  - (5) Any limitations set forth in this subpart.
- (b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see [part 30](#)). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.
- (c) When contractor accounting practices are inconsistent with this [subpart 31.2](#), costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.
- (d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

CAS = Cost Accounting Standards

# Allowable and Unallowable Costs – FAR

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## 31.201-3 Determining reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including-

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.


**Reasonable – A prudent business person would have purchased this item for this price. To be charged to the contract, purchase should relate to fulfilling the mission of Fermilab.**



# Allowable and Unallowable Costs – FAR

## 31.201-4 Determining allocability.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it-

- (a) Is incurred specifically for the contract; 
- (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

Allocable – It can be assigned to the activity on some reasonable basis. This includes Direct and Indirect Costs.



# Allowable and Unallowable Costs – FAR

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## 31.201-2 Determining allowability.

(a) A cost is allowable only when the cost complies with all of the following requirements:

(1) Reasonableness.

(2) Allocability.



(3) Standards promulgated by the CAS Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the circumstances.

- CAS is a set of standards used to ensure consistency in cost accounting throughout Government agencies.
- Like costs must be treated the same in like circumstances according to CAS guidance.

## Allowable and Unallowable Costs – FAR

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The 31.205 “Selected costs” section of FAR has information on certain “Selected” types of costs.

31.201 General.

31.202 Direct costs.

31.203 Indirect costs.

31.204 Application of principles and procedures.

31.205 Selected costs. 

- 52 different types of costs are listed (for example):
  - 31.205-6 Compensation for personal services
  - 31.205-26 Material Costs
  - 31.205-33 Professional and consultant service costs
  - 31.205-44 Training and education costs
  - 31.205-46 Travel Costs
    - There’s a lot of information in each section

# Allowable and Unallowable Costs – FAR

## Let's expand the section on Travel Costs (FAR 31.205-46)



### 31.205-46 Travel costs.

1. (a) Costs for transportation, lodging, meals, and incidental expenses:
  - a. (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.
  - b. (2) Except as provided in paragraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this section) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—
    - i. (i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the contiguous United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Publishing Office, Washington DC 20402, Stock No 922-002-00000-2;
    - ii. (ii) Joint Travel Regulation, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, and outlying areas of the United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Publishing Office, Washington DC 20402, Stock No 908-010-00000-1; or
    - iii. (iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 215, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this paragraph, available on a subscription basis from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, Stock No 744-008-00000-0.
  - c. (3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this section. For such higher amounts to be allowable, all of the following conditions must be met:
    - i. (i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraphs (a)(2)(i), (ii), or (iii) of this section, must exist.
    - ii. (ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.
    - iii. (iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.
    - iv. (iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this section, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by paragraph (a)(3)(ii) of this section and, if applicable, paragraph (a)(3)(iii) of this section must be retained.
  - d. (4) Paragraphs (a)(2) and (3) of this section do not incorporate the regulations cited in paragraphs (a)(2)(i), (ii), and (iii) of this section in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.
  - e. (5) An advance agreement (see 31.109) with respect to compliance with paragraphs (a)(2) and (3) of this subsection may be useful and desirable.
  - f. (6) The maximum per diem rates referenced in paragraph (a)(2) of this subsection generally would not constitute a reasonable daily charge.
    - i. (i) When no lodging costs are incurred; and/or
    - ii. (ii) On partial travel days (e.g., day of departure and return). Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulation or Joint Travel Regulations, they must result in a reasonable charge.
  - g. (7) Costs shall be allowable only if the following information is documented:
    - i. (i) Date and place (city, town, or other similar designation) of the expenses;
    - ii. (ii) Purpose of the trip; and
    - iii. (iii) Name of person on trip and that person's title or relationship to the contractor.
2. (b) Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in either of the above airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.
3. (c)
  - a. (1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.
  - b. (2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the allowable airfare described in paragraph (b) of this section for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than allowable airfare listed in paragraph (b) of this section are applicable, or when an advance agreement under paragraph (c)(3) of this section has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest logs for all flights on such company aircraft. As a minimum, the manifest log shall indicate:
    - i. (i) Date, time, and points of departure;
    - ii. (ii) Destination, date, and time of arrival;
    - iii. (iii) Name of each passenger and relationship to the contractor;
    - iv. (iv) Authorization for trip; and
    - v. (v) Purpose of trip.
  - c. (3) Where an advance agreement is proposed (see 31.109), consideration may be given to the following:
    - i. (i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently;
    - ii. (ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.
4. (d) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

# Allowable and Unallowable Costs – FAR

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## 31.205-46 Travel Costs (continued)

### 31.205-46 Travel costs.

1. (a) Costs for transportation, lodging, meals, and incidental expenses.
  - a. (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.
  - b. (2) Except as provided in paragraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this section) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the-
    - i. (i) Federal Travel Regulations, prescribed by the General Services Administration

FAR references the **Federal Travel Regulations (FTR)**  
Now we have to look somewhere else!

## Allowable and Unallowable Costs – FAR

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...to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the - Federal Travel Regulations





## Allowable and Unallowable Costs – FTR

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- The FTR is used as a guide to set our daily **per diem** rates:
  - Lodging
  - Meals and Incidental Expenses (M&IE)
- As a contractor, FRA uses the FTR as a guide. Fermilab's Travel Policy does not always match the FTR.
- Even some of our Per Diem rates do not match the FTR (for example the CERN M&IE rate).
- **Follow Fermilab's Travel Policies to ensure allowability**

## A Word About Using ProCards

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- ProCards are only to be used for **Allowable Costs**.
- Exceptions:
  - There are a few special cards that are linked to tasks that are associated with unallowable costs.
  - Only these special cards can be used for making Unallowable purchases!
  - These cards are linked to a Project R7FXXX. These Projects are charged to FRA.



## Additional Thoughts

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- The guidance that we follow is very detailed (Prime Contract, FAR, DEAR, FTR, etc.).
- Remember in order to be Allowable, purchases should be:
  - ✓ Incurred Specifically for the Contract
  - ✓ Reasonable
  - ✓ Allocable
  - ✓ Treated Consistently
- Follow Fermilab Travel Policy
- Unallowable costs cannot be charged to contract. If they are found during an audit, they become audit findings and must be repaid.

## Are These Purchases Allowable (Contract Chargeable)?

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## Are These Purchases Allowable (Contract Chargeable)?

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Jello was purchased to help ailing Bison. Usually food is unallowable, but in this instance the purchase was allowable. Maintaining the Bison herd helps fulfill the mission of the Lab as it is a “public outreach” activity.



## Are These Purchases Allowable (Contract Chargeable)?

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The purpose of the wrench determines allowability. If it is used on Lab equipment or in some other way to fulfill the mission of the Lab, it is allowable.



## Are These Purchases Allowable (Contract Chargeable)?

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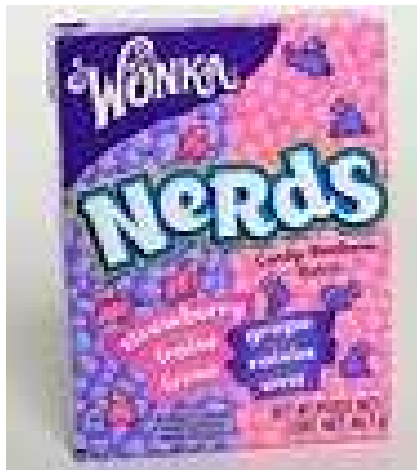
The moving of the g-2 magnet of course helps fulfill the mission of the Lab and the associated costs are allowable.



## Are These Purchases Allowable (Contract Chargeable)?

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Candy was purchased and given to the public during the Lab's 50<sup>th</sup> Anniversary Celebration. Usually such a purchase is unallowable. However, the **Contracting Officer** has the authority to allow such purchases on our contract.



## Where to get help

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If you have questions regarding the allowability of a purchase:

- PO related: Procurement will work with Accounting to determine allowability.
- Non PO related: Contact your FFM who will work with Accounting.
- Travel related: First check the travel policy, then contact Accounting.
- Large purchases or special situations may require help from the Office of General Counsel.

## Links for Additional Information

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The Prime Contract can be found on the Fermilab website under the Office of General Counsel at: <https://generalcounsel.fnal.gov/prime-contract/>

FAR 31.2: <https://www.acquisition.gov/content/subpart-312-contracts-commercial-organizations>

FTR Per Diem Rates: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

DEAR: <https://www.federalregister.gov/documents/2000/03/13/00-4880/departments-of-energy-acquisition-regulation-rewrite-of-regulations-governing-management-and.....>